



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Military Ocean Terminal Concord, California; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Military Surface Deployment and Distribution Command (SDDC) requested that the U.S. Army Corps of Engineers (Corps) revise the restricted area boundaries for the Military Ocean Terminal Concord (MOTCO). The MOTCO restricted area is located along the south shore of Suisun Bay, north of the City of Concord, Contra Costa County, California. The request to revise the boundaries of the MOTCO restricted area is due to the need to provide a more sufficient security buffer distance in navigable waters next to critical MOTCO shoreline infrastructure.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2022-0012, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number COE-2022-0012 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2022-0012. All comments received will be included in the public docket without change and may be made available on-line at <http://regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922.

SUPPLEMENTARY INFORMATION:

In response to this request by the SDDC, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is proposing to amend its regulations at 33 CFR 334.1110(a) by revising the restricted area boundaries and making additional editorial changes to clarify the description of the new boundaries. The existing restricted area boundary at the western terminus would be shifted approximately 700 yards west along the shoreline so that it encompasses the mouth of Hastings Slough and eliminates a potential route of unauthorized encroachment into the MOTCO installment. Along the central and eastern parts of the restricted area, the existing restricted area boundary would be shifted bayward to the existing ship channel, in order to provide an adequate security buffer around MOTCO's piers. The revised eastern boundary of the restricted area would follow the southern edge of the ship channel, and would therefore not impact vessel traffic in the ship channel. The eastern shoreline terminus of the restricted area would remain at its current location.

Procedural Requirements

a. Regulatory Planning and Review. This proposed rule is not a "significant regulatory action" under Executive Order 12866 (58 FR 51735,

October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and it was not submitted to the Office of Management and Budget for review.

b. Review Under the Regulatory Flexibility Act. This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The proposed change to the restricted area boundaries is necessary to eliminate a potential route of unauthorized encroachment into the MOTCO installation. Small entities can utilize navigable waters outside of the restricted area. Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the modification of the boundaries of this restricted area would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public.

c. Review Under the National Environmental Policy Act. The Corps expects that the proposed rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. If no adverse comments are received, the environmental assessment will be prepared for the decision-making for the final rule. After the

environmental assessment is prepared, it may be reviewed by contacting the Corps' San Francisco District office at 415-503-6795 or by email at CESPN-RG-Info@usace.army.mil.

d. Unfunded Mandates Act. The proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). The Corps has also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This proposed rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger Zones, Navigation (water), Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps is proposing to amend 33 CFR Part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Amend § 334.1110 by revising paragraph (a) to read as follows:

§ 334.1110 Military Ocean Terminal Concord; restricted area.

(a) The area. Beginning at point A on the shore west of the mouth of a small slough (known as Hastings Slough) and passing east of buoy R “6” bearing 60°30’ for 2,860 yards, through Point B on the eastern end of the two Seal Islands, to point C on the southern edge of the Roe Island Channel near buoy R “16A”; thence in a generally easterly direction running along the southern edge of the Roe Island Channel, Port Chicago Reach and Middle Ground West Reach (points D and E) to point F directly north of the eastern shore boundary (point G); thence 180° to point G on the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

	Latitude	Longitude
Point A (shoreline)	38.0513	-122.0576
Point B	38.0579	-122.043
Point C	38.063	-122.0307
Point D	38.0612	-122.0204
Point E	38.0594	-122.001
Point F	38.0594	-121.9882
Point G (shoreline)	38.0521	-121.9882

The datum for these coordinates is North Atlantic Datum (NAD) 83.

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Thomas P. Smith,

Chief, Operations and Regulatory Division.

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